

1 HONORABLE RICHARD A. JONES
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9
10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 BRANDON PERRON,
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17 Plaintiff,

18 v.
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20 FEDERAL BUREAU OF
21 INVESTIGATION, et al.,
22

23 Defendants.
24

25 CASE NO. C17-215 RAJ
26 ORDER
27

28 **I. INTRODUCTION**

29 This matter comes before the Court on Defendant Federal Bureau of
30 Investigation’s (“FBI” or “Defendant”) Motion to Dismiss. Dkt. # 11. Plaintiff did not
31 file a response to this Motion. For the reasons set forth below, the Court **GRANTS**
32 Defendant’s Motion.

33 **II. BACKGROUND**

34 The following is taken from Plaintiff’s Amended Complaint, which is assumed to
35 be true for the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910
36 (9th Cir. 2007).

1 Plaintiff, proceeding *pro se*, brings this action against Defendants, the Federal
2 Bureau of Investigation (“FBI”), the FBI National Instant Criminal Background Check
3 (“FBI NICS”) Division, FBI NICS officers, and United States Attorney for the Western
4 District of Washington, Annette L. Hayes, claiming erroneous denial of a firearm.
5 Dkt. # 9 (Amended Complaint) at 2.

6 Plaintiff alleges that on March 13, 2015, he attempted to purchase a firearm and
7 that the transaction was denied by the National Instant Criminal Background Check
8 System (“NICS”) because of a prior conviction. *Id.* He alleges that he had further
9 communications with NICS disputing this denial and the reasons for it. *Id.* On August
10 12, 2015, Plaintiff alleges that he received a notification that there was insufficient
11 evidence to overturn his denial. Plaintiff responded several times but received no further
12 communications from NICS. *Id.* Plaintiff alleges that he lost “countless hours of
13 recreation” due to this denial. *Id.*

14 Plaintiff further alleges that in 2014, a man named Kevin Maitland began
15 threatening to kill him. Dkt. # 9 at 3. He reported these threats to the San Jose Police
16 Department, the Gilroy Police Department, and the San Benito County Sheriff
17 Department. *Id.* On June 11, 2015, Plaintiff received a subpoena to be witness at a trial
18 against Mr. Maitland. *Id.* Plaintiff contends that he moved to Washington State because
19 he feared for his life and attempted to purchase a firearm because he had reason to
20 believe that Mr. Maitland knew of his move and was a continuing threat. *Id.*

21 Plaintiff requests that the Court order that: (1) the names of all employees that
22 worked on his case be disclosed so that they may be served; (2) FBI NICS “properly
23 investigate denial appeals”; (3) FBI NICS allow his purchase of a firearm to proceed; (4)
24 all background checks be passed “as long as the NICS division of the FBI is closed”; (5)
25 an award of \$400 for the filing fee for this action; and (6) an internal investigation into
26 this matter with the FBI. Dkt. # 9 at 4.

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1 On June 2, 2017, Defendant FBI filed a Motion to Dismiss Plaintiff's Complaint.
2 Dkt. # 6. On June 21, 2017, Plaintiff filed both a Response to Defendant's Motion and an
3 Amended Complaint. Dkt. ## 9, 10. Defendant then filed this Motion to Dismiss
4 pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), based on Plaintiff's
5 Amended Complaint. Dkt. # 11. Plaintiff did not respond to this Motion, therefore the
6 Court will construe Plaintiff's previous Response as a response to Defendant's current
7 Motion.

8 **III. LEGAL STANDARD**

9 **A. FRCP 12(b)(1)**

10 Federal courts are tribunals of limited jurisdiction and may only hear cases
11 authorized by the Constitution or a statutory grant. *Kokkonen v. Guardian Life Ins. Co.*
12 *of America*, 511 U.S. 375, 377 (1994). The burden of establishing subject-matter
13 jurisdiction rests upon the party seeking to invoke federal jurisdiction. *Id.* Once it is
14 determined that a federal court lacks subject-matter jurisdiction, the court has no choice
15 but to dismiss the suit. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006); Fed. R. Civ.
16 P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction,
17 the court must dismiss the action.”).

18 A party may bring a factual challenge to subject-matter jurisdiction, and in such
19 cases the court may consider materials beyond the complaint. *PW Arms, Inc. v. United*
20 *States*, 186 F. Supp. 3d 1137, 1142 (W.D. Wash. 2016) (citing *Savage v. Glendale Union*
21 *High Sch.*, 343 F.3d 1036, 1039 n. 2 (9th Cir. 2003); *see also McCarthy v. United States*,
22 850 F.2d 558, 560 (9th Cir. 1988) (“Moreover, when considering a motion to dismiss
23 pursuant to Rule 12(b)(1) the district court is not restricted to the face of the pleadings,
24 but may review any evidence, such as affidavits and testimony, to resolve factual disputes
25 concerning the existence of jurisdiction.”).

26 **B. FRCP 12(b)(6)**

27 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a

1 claim. The rule requires the court to assume the truth of the complaint's factual
2 allegations and credit all reasonable inferences arising from those allegations. *Sanders v.*
3 *Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court "need not accept as true conclusory
4 allegations that are contradicted by documents referred to in the complaint." *Manzarek v.*
5 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must
6 point to factual allegations that "state a claim to relief that is plausible on its face." *Bell*
7 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint
8 avoids dismissal if there is "any set of facts consistent with the allegations in the
9 complaint" that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.
10 662, 679 (2009).

11 A court typically cannot consider evidence beyond the four corners of the
12 complaint, although it may rely on a document to which the complaint refers if the
13 document is central to the party's claims and its authenticity is not in question. *Marder v.*
14 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to
15 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

16 IV. DISCUSSION

17 Under 18 U.S.C. § 925A, a person denied a firearm pursuant to 18 U.S.C. § 922
18 due to the provision of erroneous information by any State or political subdivision or by
19 the NICS "may bring an action against the State or political subdivision responsible for
20 providing the erroneous information, or responsible for denying the transfer, or against
21 the United States" for an order directing the information be corrected, or the transfer
22 approved. The Court may also allow the prevailing party a reasonable attorney's fee as
23 part of the costs. 18 U.S.C. § 925A.

24 Defendant argues that Plaintiff lacks Article III standing because is no "case or
25 controversy" as required for federal jurisdiction. "Article III of the Constitution limits
26 federal-court jurisdiction to 'cases' and 'controversies.'" *Hamamoto v. Ige*, No. 15-
27 15572, 2018 WL 615429, at *2 (9th Cir. Jan. 25, 2018). There must be an actual

1 controversy “extant at all stages of review, not merely at the time the complaint is filed.”
2 *Davis v. Fed. Election Comm’n*, 554 U.S. 724, 732–33, 128 S.Ct. 2759, 171 L.Ed.2d 737
3 (2008). “This means that, at all stages of the litigation, the plaintiff ‘must have suffered,
4 or be threatened with, an actual injury traceable to the defendant [that is] likely to be
5 redressed by a favorable judicial decision.’” *Protectmarriage.com-Yes on 8 v. Bowen*,
6 752 F.3d 827, 834 (9th Cir. 2014) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct.
7 978, 140 L.Ed.2d 43 (1998)). Defendant represents that after reviewing the information
8 in the NICS database, it has been determined that Plaintiff is able to purchase a firearm,
9 and there is no information in the NICS databases that would prevent him from doing so.
10 Dkt. # 12. Defendant sent Plaintiff a letter informing him of this fact. Dkt. # 12-1.
11 Therefore, there is no controversy and Plaintiff’s claim is moot.

12 To the extent that Plaintiff seeks equitable relief from Defendant, his claim also
13 fails. 18 U.S.C. § 925A does not provide for any such relief. Pursuant to the statute,
14 Plaintiff may bring action for an order directing that the erroneous information be
15 corrected or the transfer approved, and the Court may allow the prevailing party
16 reasonable attorney’s fees. Here, the information at issue has been corrected and Plaintiff
17 may now purchase a firearm. However, Plaintiff is not a prevailing party where relief is
18 obtained through “[a] defendant’s voluntary change in conduct.” *Buckhannon Bd. &*
19 *Care Home, Inc. v. W. Virginia Dep’t of Health & Human Res.*, 532 U.S. 598, 605, 121
20 S. Ct. 1835, 1840, 149 L. Ed. 2d 855 (2001). Neither has Defendant, as the federal
21 government, waived sovereign immunity with respect to any claim for equitable relief.
22 “The basic rule of federal sovereign immunity is that the United States cannot be sued at
23 all without the consent of Congress.” *Block v. North Dakota*, 461 U.S. 273, 287 (1983).

24 Plaintiff also requests that the NICS division of the FBI “automatically pass” all
25 background checks while it is “closed to deal with refugee vetting” as it is a “direct
26 violation of the 5th Amendment . . . [a]s well as 2nd, 6th and others.” Dkt. # 9 at 4.
27 The only factual allegations that appear to relate to a constitutional claim are Plaintiff’s

1 contentions that the denial of his firearm purchase assumed his “guilt before innocence”,
2 that the closure of the NICS division violates the Fifth Amendment, and that Plaintiff was
3 denied his right to self-defense against Mr. Maitland and denied the “pursuit of
4 happiness”. Dkt. # 9 at 2.

5 First, the NICS is not, as Plaintiff alleges, closed. Dkt. # 11 at 20. Second, as
6 noted above, Plaintiff’s constitutional claims are moot. Plaintiff is currently able to
7 purchase a firearm, and makes no factual allegations to support any other violations of his
8 constitutional rights. Plaintiff also attempts to bring a claim against individual federal
9 agents and U.S. Attorney Annette L. Hayes for denial of his right to purchase a firearm
10 under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S.
11 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). However, to survive a motion to dismiss in a
12 *Bivens* claim, “a plaintiff must plead that each Government-official defendant, through
13 the official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at
14 676. Plaintiff fails to do so. Therefore, Defendant’s Motion to Dismiss is **GRANTED** as
15 to all Defendants¹.

16 Even taking these allegations as true and construing them liberally, the Court
17 concludes that Plaintiff lacks standing and that his Amended Complaint fails to state a
18 valid claim for relief. *Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1011 (9th Cir. 2011)
19 (citing *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)) (“Where a plaintiff proceeds
20 *pro se*, the court must construe the plaintiff’s complaint liberally.”) The Court
21 **DISMISSES** Plaintiff’s Amended Complaint without leave to amend. *Lucas v. Dep’t of*
22 *Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (dismissal without leave to amend is proper
23 where “it is absolutely clear that no amendment can cure the defect”)

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26 ¹ Defendant argues that Plaintiff’s Amended Complaint should be dismissed because
27 service of process has not been affected on any of the defendants. As the Court finds that
Plaintiff does not have standing to bring this claim, Defendant’s argument will not be addressed
at this time.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's Motion to Dismiss.

Dkt. # 11.

Dated this 13th day of February, 2018.

Richard D. Jones

The Honorable Richard A. Jones
United States District Judge